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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/061,755	02/01/2002	Brandon James Shuman	1759-17-3	2908

20995 7590 12/22/2003

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EXAMINER
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SAM, CHARLES H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 12/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/061,755

Applicant(s)

SHUMAN, BRANDON JAMES

Examiner

Charles H. Sam

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5-8,13-17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagner (5,147,369). Wagner discloses the invention as claimed comprising a first structure 52 including a first circumferential surface, and a second structure 54 including a second circumferential surface corresponding to the first circumferential surface.

Regarding claims 2,14 and 17, Wagner discloses a biasing element (42,44,46) coupled to the first structure 52 and the second structure 54.

Regarding claim 3, Wagner discloses the biasing element (42,44,46) that brings the first and second circumferential surfaces together with sufficient force.

Regarding claim 5, Wagner discloses the first circumferential surface of the first structure 52 includes a cutting edge 60, and the second circumferential surface of the second structure 54 includes a cutting edge 62.

Regarding claim 6, Wagner discloses a biasing element (42,44,46) coupled to the first structure 52 and the second structure 54.

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Regarding claim 7, Wagner discloses the first circumferential surface of the first structure 52 includes a cutting edge 60, and the second circumferential surface of the second structure 54 includes a cutting edge 62.

Regarding claim 8, Wagner discloses when the first and second circumferential surfaces are brought together the first structure 52 and the second structure 54 define a chamber (56,58).

Regarding claims 15 and 16, see column 3, lines 1-68.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner (5,147,369) in view of Domino (4,888,015). Wagner discloses the invention as claimed except for the first and second apertures. However, Domino discloses a surgical device 50 comprising a first structure 54 having a first aperture 62, and a second structure 56 having a second aperture 62. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify the structure of Wagner's device by providing a central aperture to the first structure 52 and second structure 54 for allowing access to the deleterious body tissue for excision.

Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner (5,147,369) in view of Green (4,402,445). Wagner discloses the invention as

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claimed except for a first interlocking surface and a second interlocking surface.

However, Green discloses a surgical device including an interlocking surface portion

122 which interlocks with an interlocking surface portion 92. See column 7, lines 13-19.

It would have been obvious to one having an ordinary skill in the art at the time the

invention was made to modify Wagner by including a first interlocking surface to the first

structure and a second interlocking surface to the second structure in view of Green for

providing a interlocking means between the first and second structure.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles H. Sam whose telephone number is (703) 305-5650. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.



chs  
December 8, 2003



MICHAEL J. MILANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700